

Item SPR05-19 Response Form

Title: Petition for Issuance of New Birth Certificate (Change of Gender) (adopt forms NC-300, NC-310, NC-320, and NC-330)

- ☐ **Agree** with proposed changes
- ☐ **Agree** with proposed changes **only if modified**
- ☐ **Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

Address: _____

City, State, Zip: _____

Please **write** or **fax** or **respond using the Internet** to:

Address: Ms. Romunda Price,
Judicial Council, 455 Golden Gate Avenue,
San Francisco, CA 94102
Fax: (415) 865-7664 **Attention:** Romunda Price
Internet: www.courtinfo.ca.gov/invitationstocomment

DEADLINE FOR COMMENT: 5:00 p.m., Monday, June 20, 2005

Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council, the Rules and Projects Committee, or the Policy Coordination and Liaison Committee.
All comments will become part of the public record of the council's action..*

Invitation to Comment (SPR05-19)

Title	Petition for Issuance of New Birth Certificate (Change of Gender) (adopt forms NC-300, NC-310, NC-320, and NC-330)
Summary	A set of four new optional Judicial Council forms for obtaining an order for issuance of a new birth certificate indicating a change of gender would be approved.
Source	Civil and Small Claims Advisory Committee Hon. Elihu M. Berle, Chair
Staff	Patrick O'Donnell, Committee Counsel, 415-865-7665 patrick.o'donnell@jud.ca.gov
Discussion	<p><i>This Proposal</i></p> <p>The Judicial Council has previously adopted forms for persons to use to apply for orders for change of name, and orders for change of name and gender. It has been proposed that a third set of forms be approved to be used to apply for an order for issuance of a birth certificate reflecting a change of gender only.</p> <p>This proposal recommends that the Judicial Council, effective January 1, 2006, approve:</p> <ol style="list-style-type: none">1. <i>Petition for Issuance of New Birth Certificate (Change of Gender)</i> (form NC-300);2. <i>Declaration of Physician—Attachment to Petition for Issuance of New Birth Certificate (Change of Gender)</i> (form NC-310);3. <i>Order to Show Cause for Issuance of New Birth Certificate (Change of Gender)</i> (NC-320); and4. <i>Order for Issuance of New Birth Certificate (Change of Gender)</i> (form NC-330). <p><i>Rationale for Proposal</i></p> <p>The proposed gender change forms would be used by persons who have already legally changed their names, but want to obtain a separate order for issuance of a new birth certificate reflecting a change of gender. Currently, there are no forms specifically designed for this situation.</p> <p>California statutes authorize a petition for a new birth certificate</p>

Invitation to Comment (SPR05-19)

reflecting a change of gender. (See Health and Safety Code, §§ 103425–103445.) The proposed forms would implement these statutes.

The proposed forms are simpler than the existing combined name and gender change forms because some of the information required for name changes would not be necessary on the forms. It would be better to have the proposed single-purpose forms available for persons to use rather than having them modifying the combined forms.

Copies of forms NC-300, NC-310, NC-320, and NC-330 are attached. The text of Health and Safety Code sections 103425–103445 which concern petitions for a new birth certificate reflecting a change of gender is also attached.

Attachments

INSTRUCTIONS FOR FILING PETITION FOR ISSUANCE OF NEW BIRTH CERTIFICATE Change of Gender

(This instruction page is for the information of petitioners. It is not part of the petition and does not need to be filed.)

1. Where to File

The petition for the issuance of a new birth certificate reflecting a change in gender must be filed in the superior court in the county where the petitioner presently lives.

2. What Forms Are Required

Prepare an original and a copy of each of the following documents:

- a. *Petition for Issuance of New Birth Certificate (Change of Gender)* (form NC-300).
- b. *Declaration of Physician—Attachment to Petition for Issuance of New Birth Certificate (Change of Gender)* (form NC-310) (to be attached to form NC-300).
- c. *Order to Show Cause for Issuance of New Birth Certificate (Change of Gender)* (form NC-320).
- d. *Order for Issuance of New Birth Certificate (Change of Gender)* (form NC-330).

In addition, if the petitioner has already obtained a decree of change of name, a certified copy of the decree must be attached to the petition.

3. Filing Fee

Prepare an original *Civil Case Cover Sheet* (form CM-010). File the original petition and *Civil Case Cover Sheet* with the clerk of the court and obtain a filed-endorsed copy of the petition. A filing fee will be charged unless you qualify for a fee waiver. (If you want to apply for a fee waiver, see *Application for Waiver of Court Fees and Costs* (form 982(a)(17)); *Information Sheet on Waiver of Court Fees and Costs* (form 982(a)(17)(A)); and *Order on Application for Waiver of Court Fees and Costs* (form 982(a)(18)).

4. Requesting a Court Hearing Date

You should request a date for the hearing on the *Order to Show Cause* (form NC-320).

5. Filing the Order to Show Cause

After the hearing date has been included and you have obtained a judge's signature on the *Order to Show Cause*, file the original order in the clerk's office, and obtain a filed-endorsed copy of the order for your records.

6. Publishing the Order to Show Cause

A copy of the *Order to Show Cause* must be published in a local newspaper of general circulation once a week for **at least four consecutive weeks** before the date of the hearing on the petition. The petitioner selects the newspaper from among those newspapers legally qualified to publish orders and notices. The newspaper used must file a Proof of Publication with the superior court before the hearing. If no newspaper of general circulation is published in the county, the court may order the *Order to Show Cause* to be posted by the clerk.

7. Court Hearing

Bring copies of all documents to the hearing. If the judge grants the petition, the judge will sign the *Order for Issuance of a New Birth Certificate (Gender Change)*.

8. New Birth Certificate

To obtain a new birth certificate reflecting the change of gender, file a certified copy of the order within 30 days with the Secretary of State and the State Registrars and pay the applicable fees. You may write to the Registrars at:

**Department of Health Services
Office of Vital Records
304 "S" Street
Sacramento, CA 95814**

Upon receipt of the order, the Registrar shall establish a new birth certificate.

Local courts may supplement these instructions. Check with the court to determine whether supplemental information is available. For instance, the court may provide you with additional written information about what department handles these petitions, when petitions are heard, and which newspapers may be used to publish the *Order to Show Cause*.

PETITION OF <i>(Name of petitioner):</i>	CASE NUMBER:
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DECLARATION OF PHYSICIAN

Page ____ of ____

Attachment to *Petition for Issuance of New Birth Certificate (Change of Gender)* (Form NC-300)

I declare under penalty of perjury under the laws of the State of California that the information in the foregoing declaration is true and correct.

Date:

(TYPE OR PRINT NAME OF PHYSICIAN)

(SIGNATURE OF PHYSICIAN)

1. Petitioner (*name*): _____ is a resident of this county.
2. Petitioner has filed a petition requesting an order for the issuance of a new birth certificate reflecting the change of petitioner's gender
 - a. ☐ from male to female.
 - b. ☐ from female to male.
3. **THE COURT ORDERS** that all persons interested in this matter shall appear before this court at the hearing indicated below to show cause, if any, why the petition should not be granted.

a. Date:	Time:	Dept.:	Room:
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Date: _____

JUDICIAL OFFICER

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HEALTH AND SAFETY CODE SECTION 103425-103445

103425. Whenever a person born in this state has undergone surgical treatment for the purpose of altering his or her sexual characteristics to those of the opposite sex, a new birth certificate may be prepared for the person reflecting the change of gender and any change of name accomplished by an order of a court of this state, another state, the District of Columbia, or any territory of the United States. A petition for the issuance of a new birth certificate in those cases shall be filed with the superior court of the county where the petitioner resides.

103430. (a) The petition shall be accompanied by an affidavit of a physician documenting the sex change, and a certified copy of the court order changing the applicant's name (if applicable).

(b) The petition shall be heard at the time appointed by the court and objections may be filed by any person who can, in those objections, show to the court good reason against the change of birth certificate. At the hearing, the court may examine on oath the petitioner, and any other person having knowledge of facts relevant to the application. At the conclusion of the hearing the court shall make an order to issue a new certificate, or dismissing the petition, as to the court may seem right and proper.

(c) A certified copy of the decree of the court ordering the new birth certificate, shall within 30 days from the date of the decree, be filed with the State Registrar. Upon receipt thereof together with the fee prescribed by Section 103725, the State Registrar shall establish a new birth certificate for the applicant.

(d) The new birth certificate shall indicate the sex of the registrant as it has been surgically altered and shall reflect any change of name specified in the application if accompanied by a court order, as prescribed by Section 103425. No reference shall be made in the new birth certificate, nor shall its form in any way indicate, that it is not the original birth certificate of the registrant.

103435. In lieu of separate proceedings, a single petition for a change of name and issuance of a new birth certificate reflecting a change of gender may be filed with the superior court. With respect to such a petition, the court shall follow the procedure set forth in Title 8 (commencing with Section 1275) of Part III of the Code of Civil Procedure. A certified copy of the decree of the court issued pursuant to this section shall within 30 days be filed with both the Secretary of State and the State Registrar. Upon its receipt, the State Registrar shall establish a new birth certificate as provided in this article.

103440. The new birth certificate shall supplant any birth certificate previously registered for the applicant and shall be the only birth certificate open to public inspection. The application and supporting affidavit shall be filed with the original record of birth, that shall remain as a part of the records of the State Registrar. All records and information specified in this article, other than the newly issued birth certificate, shall be available only upon written request of the registrant or an order of a court of record.

When a new birth certificate is established under this article, the State Registrar shall transmit copies of the newly established birth certificate for filing to the local registrar and the county recorder whose records contain copies of the original certificate, who shall forward the copies of the original certificate to the State Registrar for filing with the original certificate, if it is practical for him or her to do so. If it is impractical for him or her to forward the copy to the State Registrar, he or she shall effectually seal a cover over the copy of the original certificate in a manner as not to deface or destroy the copy and forward a verified statement of his or her action to the State Registrar. Thereafter the information contained in the record shall be available only upon written request of the registrant or on order of a court of record.

103445. The State Registrar shall transmit a certified copy of a birth certificate newly established under this article to the registrant without additional charge.